IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET

MISC.CIVIL APPLICATION NO.48 OF 2004

Mrs.Priti Hiren Vador ...Applicant

Vs.

Hiren Ramesh Vador ...Respondent

Shri S.M.Kamble, Advocate for the Applicant.
Shri V.S.Kapase, Advocate for the Respondent

CORAM: A.S.OKA, J.

DATED: AUGUST 26, 2004.

P.C.:

1. Heard the Counsel appearing for the parties. The Application is filed by the wife praying for transfer of Petition for divorce filed by the Respondent-husband against her in the Family Court at Bandra,Mumbai to the court of Civil Judge (S.D.), Kolhapur. There is a male child born out of wedlock and custody of the male child is with the Applicant. The age of the child appears to be about two years. The Applicant has stated that she is required to take care of her child. It is impossible for her to attend the Court at Bandra, Mumbai.

2. If the averments made in the Application are perused a case is apparently made out for transfer by the Applicant.

However, the Application is opposed by the Respondent-husband by relying upon the order passed by the Family Court, Bandra on 29th December 2003. By the said order the Respondent has been directed to provide a separate accommodation to the Applicant either at Mulund or Thane within a period of one month from that date and further directed to pay maintenance of Rs.1500/- per month. The learned Counsel for the Respondent-husband states that the said order is not challenged till today by the Respondent. He also pointed out that certain premises are offered to the Applicant. Shri Kamble learned Counsel appearing for the Applicant stated that the premises offered were inconvenient and not in accordance with the order of the Family Court.

3. The order dated 29th December 2003 has been passed on the interim Application made by the Respondent. It is not the case of the Applicant that she is aggrieved by the said order. The direction is given to provide accommodation to the Applicant as a condition for grant of ad-interim relief in terms prayer clause (a) of the Application made by the Respondent. If according to the said order accommodation is actually made available to the Applicant-wife, the Applicant-wife may not be entitled to seek transfer on the grounds which are pleaded in this Application. It is true that the accommodation is not made physically available till today to the Applicant-wife as there is a dispute between the parties as regards suitability of the premises offered by the

Respondent.

4. I am informed that the Petition pending in the Family Court is not yet ready for hearing. Therefore, at this stage in my view no case is made out for passing the order of transfer. If the Respondent-husband fails to provide the accommodation to the Applicant in terms of order dated 29th December 2003 within a period of three months from today, it will be open for the Applicant to make a fresh Application to this Court for the relief which is prayed for in this Application. It is for the Family Court to decide whether the accommodation which is offered by the Respondent-husband is in accordance with the order dated 29th December 2003.

5. Subject to observations made above, and subject to the liberty reserved to the Applicant as stated above, the Application stands disposed of with no order as to costs.

Judge.